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I. INTRODUCTION

Nebraska's first drive for statehood, along with the necessity of constitution making, took place during the "lull before the storm" in 1860. In their platforms both political parties endorsed statehood and its accompanying advantages. Principal arguments advanced in favor of the step were that increased immigration might be expected, that there would be an influx of capital, that school lands would be made available for the use of public schools, and that threats of speculation made prompt state acquisition of public lands imperative.[1] Despite this apparent spearhead of political leadership afforded by both political parties, territorial voters rejected statehood by a vote of 2,732 to 2,094.[2]

As the Civil War evolved, party attitudes toward statehood changed in part. The Democrats, at least, began to oppose statehood because they saw it as a ". . . scheme of the administration to strengthen the Republican party and increase Mr. Lincoln's chances to succeed himself in the presidency."[3] The Democratic opposition came as a reaction to the memorial passed by the strongly-Republican Ninth Territorial Legislature which petitioned Congress for statehood on January 16, 1864, to which petition Congress responded promptly by passing an enabling act on April 19th of the same year. During the campaign for constitutional convention delegates, "the anti-state [Democratic] party succeeded, at the outset, in putting their opponents on the defensive, and easily kept them in that attitude."[4] Anti-statehood—anti-constitution forces campaigned to elect

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[1] Raymond, Nebraska's Constitution 5 (unpublished doctoral dissertation in University of Nebraska Library, 1937).

[2] 1 SHELDON, NEBRASKA, THE LAND AND THE PEOPLE 300 (1931).

[3] *Id.* at 327.

[4] III WATKINS, OFFICIAL REPORT OF THE DEBATES AND PROCEEDINGS IN THE NEBRASKA CONSTITUTIONAL CONVENTION 480 (1913).

delegates who would agree to adjourn the constitutional convention immediately after it was convened so that there would be no Nebraska constitution which Congress could approve. Because of the mixed sentiments of the electorate, opponents of statehood founded their public statements of opposition upon the ". . . inability of the people to sustain the increased cost of state government . . . "[5]

The election was held June 6, 1864, and the convention met in Omaha on the fourth of July. Despite the strength of the Republicans—who campaigned under the banner of the Union Party—Democratic opposition had been signally successful in electing anti-statehood delegates and the convention was immediately adjourned by a "record vote of 37 to 4 with nine members absent."[6]

With the end of Civil War hostilities and the beginning of the Reconstruction Period a new attempt was made. Basing their plans upon the Nebraska enabling act of 1864, proponents of statehood in the territorial legislature developed a new scheme of providing for an acceptable basic law which would present Congress with the necessary prerequisites for Nebraska's admission to the union. There are conflicting accounts as to the precise authorship of the new basic law, but one quasi-official report reads as follows: "[T]he constitution of 1866 was compiled by a committee of nine appointed by the legislature of that year . . . . It was decided to make the whole instrument as near as possible like the organic act—to meet objection to change to statehood."[7] As a further means of using the 1866 constitution as a "password to statehood," and in order to placate the Democratic opposition, "electors" as defined in the constitution were "white males."[8] "This concession was calculated to weaken or subdue the opposition of the democrats who lacked the stimulus of prospective senatorships and high federal offices which temporarily stifled the principles and stultified the philanthropic profession of the expectant republicans."[9]

As matters developed the electors of Nebraska approved the organic law of 1866 by the slender margin of one hundred votes.[10] Subsequently, charges were made that the successful ratification

[5] *Ibid.*

[6] Raymond, *op. cit. supra* note 1, at 6.

[7] III WATKINS, *op. cit. supra* note 4, at 495.

[8] NEB. CONST. art. II, § 2 (1866).

[9] III WATKINS, *op. cit. supra* note 4, at 495. A. E. Sheldon gives a somewhat different version of the 1866 constitution-making procedure.

[10] For: 3,938. Against: 3,838. NEBRASKA LEGISLATIVE COUNCIL, NEBRASKA BLUE BOOK 45 (1960) [Hereinafter cited as: NEBRASKA BLUE BOOK (plus year)].

election was the result of vile machinations and illegal activities at the ballot box.[11] Notwithstanding the possibility of this fact, Nebraska was admitted to the Union in 1867 over the veto of President Andrew Johnson.[12]

"Nebraska made the transition from territorial government to statehood . . . under a constitution hurriedly patched together . . . to meet the exegencies of post-bellum politics and 'counted in' by not too scrupulous methods," according to one commentator.[13]

Defects of the Constitution were criticized:[14]

> It was faulty in limiting the number of judicial districts and judges to three, for the next six years: it was "entirely inadequate even now." An independent supreme court was indispensible. The salaries of state officers were so paltry as to degrade the state, due to a "picayunish trick, worthy of the democratic wiseacres who perpetrated it." The limitation of the length of the [legislative] session was objectionable; members were paid for only forty days which was too short a term.[15]

II. THE STATE CONSTITUTIONAL CONVENTION

Three years later the first state constitutional convention was held in 1871. A look at the convention journal shows that the delegates took their task quite seriously, for they covered a vast number of pertinent and impertinent subjects in long and tedious detail. But, it appears that they lacked a certain amount of political acumen,[16] for the "product" of the convention, and five additional propositions submitted to the voters separately, were defeated—largely, it is said, because of provisions taxing church property valued over $5,000 and a section which required that unused railroad rights-of-way should revert to original owners.[17] Despite the fact that there were four political parties "in the field" during the cam-

[11] Raymond, *op. cit. supra* note 1, at 10.

[12] *Ibid.*

[13] Rosewater, *A Curious Chapter in Constitution-Changing*, 36 POL. SCI. Q. 409 (1921).

[14] Nebraska Commonwealth, Dec. 5, 1868.

[15] *Quoted in* III WATKINS, *op. cit, supra* note 4, at 496, where the author continues with the remark: "The partisan editor was not aware, it seems, that republicans were the aggressive promoters of the statehood scheme and that democratic leaders strongly opposed it, or that the democrats did not actually control the legislature which promulgated the constitution."

[16] See Raymond, *op. cit. supra* note 1, at 19: "For the most part the members of the convention were inexperienced."

[17] NEBRASKA BLUE BOOK 120 (1936).

paign of 1874, only the Republican platform contained a plank advocating ". . . the enactment of a new constitution at the earliest practicable day consistent with our present fundamental law . . . ."[18]

III. THE CONVENTION OF 1875

Shortly after the failure of the Convention of 1871, the legislature by joint resolution submitted to the people the question of calling another convention; and, at the 1874 election, in October, the proposition was approved by a vote of 18,067 to 3,880.[19] Accordingly, sixty-nine delegates were elected and the convention met in Lincoln on May 11, 1875.

As a basis of departure, the convention used the rejected constitution of 1871, which had in turn been modeled upon the Illinois Constitution of 1870.[20] Since it was the opinion of some that popular failure to approve the 1871 document was the result of the inclusion of certain "radical" provisions, the delegates of 1875 worked to "tone down" the more extreme aspects of the proposed law. This was easily accomplished because of the substantial number of conservative minds working in the convention. And, although limited steps were taken to prevent predatory railroads and corporate enterprise from running amok, the convention turned out a relatively "middle-of-the-road" proposal which the electorate accepted on October 12, 1875.[21]

IV. EXPERIENCE UNDER THE CONSTITUTION OF 1875

Although it was not evident at the time the constitution was made, it turned out that the conservative bloc of the convention had built better than it knew; for as written, the amending and revising sections of the 1875 law were almost unworkable. A series of unsuccessful attempts to change the constitution, using the legislative amending process, followed, but failed, not satisfying the pro-

[18] WPA, NEBRASKA PARTY PLATFORMS 1858-1940, at 57 (1940) [Hereinafter referred to as: NEBRASKA PARTY PLATFORMS].

[19] NEBRASKA BLUE BOOK 46 (1960).

[20] Raymond, *op. cit. supra* note 1, at 22-23: "The product of the [1871] convention was in large measure copied from the constitution of Illinois. . . . The convention which framed the Illinois document has been pretty well dominated by the Granger organization . . ."

[21] Lewis, The Nebraska Constitutional Convention of 1919-20, at 6 (unpublished doctoral dissertation on file at Nebraska Historical Society, Lincoln, Nebraska, 1924).

vision that amendments be approved by "a majority of the electors voting at" the "next election of senators and representatives."[22] From 1875 to 1906 only one amendment—the 1886 provision to increase legislative salaries[23]—was adopted. Later on the legislature made several other attempts to "count" amendments in,[24] but none was successful. Even the courts despaired; in the words of one of the judges: "Taking the past as a criterion by which to foretell the future, it would seem that under the construction adopted, it will be almost, if not quite, impossible to change the present constitution, however meritorious may be the amendment proposed."[25] But, ultimately, a remedy was found. In 1901, the legislature enacted a law which provided that:[26] ". . . [A] state convention of any political party . . . may declare for or against . . . [an] amendment, and such declaration shall be considered as a portion of their ticket to be filed with the Secretary of State." All "straight party" votes in general elections were to be counted as votes on constitutional amendments in accord with the previous action of that party's state convention. By use of this device several important amendments were added to the constitution. The statute, which had been adapted from an Ohio legislative act, became known as "The Party Circle Law." Presently, the new statute came under attack with the introduction of a proposed amendment to create an elective State Railway Commission. The court was friendly, however, and declared:[27]

> It is not the duty of the court to suggest methods of submitting constitutional amendments to the vote of the people. The duty of devising and applying such methods is devolved upon the legislature and, unless the method adopted by the legislature is manifestly a violation of the constitution, and unless it clearly appears that the methods adopted by the legislature will not make it practicable for the voters to express their judgement as to each amendment proposed, the courts are not at liberty to disregard the will of the

[22] NEB. CONST. art. XV, § 1 (1875).

[23] Some doubt has been cast upon the legitamacy of the procedures used to get this measure adopted: "After having lost once, this [amendment] . . . was rescued and declared adopted upon re-submission two years later, thanks to the dubious expedient of a 'recount,' the recount being made with liberal allowance by the lawmakers who were to be the beneficiaries." Rosewater, *op. cit. supra* note 13, at 411.

[24] *Ibid.*

[25] Tecumseh Nat'l Bank v. Saunders, 51 Neb. 801, 816, 71 N.W. 779, 789 (1897).

[26] NEBRASKA PARTY PLATFORMS xiii. See Neb. Laws c. 29 (1901.

[27] State v. Winnett, 78 Neb. 379, 391, 110 N.W. 1113, 1117 (1907). The Ohio Act, Ohio Laws at 352 (1902), was upheld in State v. Laylin, 69 Ohio 1, 68 N.E. 574 (1903).

> legislature. . . . The provisions contained in the act are complete in themselves and cover the whole general subject and ought to be regarded as the final expression of the legislative will.

Acceptance of the "Party Circle Law" paved the way for the nine other provisions, including the institution of home rule and the authorization of initiative and referendum, incorporated into the constitution between 1907 and 1918.[28] It is reported that during this period the most persistent subjects were "the increase in the number and salaries of judges, which was considered as six amendments at three elections; the creation of a Railway Commission, which was voted on four times; and the salary of Legislators, which was considered three times and twice raised by amendment."[29]

V. PREPARATION FOR A NEW CONVENTION

Although the "Party Circle Law" was partially successful, many people in Nebraska were dissatisfied with Nebraska's constitution. Spearheading the dissidents were Nebraska liberals who saw with the rise of Lafollette Progressivism the beginnings of a new era of reform: *e.g.* the short ballot, installation of merit systems, a unicameral legislature, a modern method of taxation, and new and better judicial procedures. Soon both of the major political parties in the state (despite their apathy in the past) were caught up in the general desire for a constitutional convention to carry out a general overhauling of the basic law of the state. This desire was voiced in both the Republican and Democratic party platforms of 1918.

As a step forward, the Nebraska House of Representatives had introduced a proposal for submitting to the people the question of calling a convention. The Senate, however, on April 8, 1915, postponed consideration of the bill indefinitely. On the following day, a group of prominent individuals, styling itself the Nebraska Popular Government League, met and devised a plan to initiate a constitutional convention, utilizing the constitutional initiative process. This arrangement would have amended the constitution to provide for convening a specific convention with a detailed prescription as to its organization and authority. Since the constitution then, as now, did not contain a provision authorizing a constitutional convention called through popular initiative, the scheme was quite ingenious. The late Dr. Leonard D. White, a

[28] Eleven amendments passed in the period 1875-1918. During the same period thirty-nine amendments had been proposed.

[29] NEBRASKA BLUE BOOK 47 (1960).

distinguished political scientist of the University of Chicago, cited the plan as unique in the history of American constitutional development.[30]

[30] The following is the initiated amendment proposed by the Nebraska Popular Government League in 1917:

"Be It Enacted by the People of the State of Nebraska:

"That Article XV (15), entitled 'Amendments,' of the Constitution of the State of Nebraska be and hereby is amended by adding thereto the following section:

"Section 3. A convention to revise, amend or change this Constitution shall be held at the state capitol, beginning the second Tuesday of October, 1919, and continuing until the business of such convention is completed. The convention shall consist of as many delegates as there are members of the House of Representatives, apportioned as provided by law for representatives, who shall be chosen at the general election to be held in November, 1918, in the manner provided by Sections 2209, 2210 and 2211 of the Revised Statutes of Nebraska for 1913 for the non-partisan choice of judges, except that candidates for nomination in any district shall not be required to file a petition signed by a number of voters greater than one percent of the votes cast therein for governor at the last preceding general election.

"Each delegate shall receive as compensation ten dollars for each day of actual attendance upon convention sessions, not to exceed the sum of three hundred dollars, and the same mileage as members of the legislature.

"The convention shall have the power to appoint such officers, employees and assistants as it may deem necessary, and fix their compensation, and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers and be the judge of the election returns and the qualifications of the delegates. Any qualified elector shall be eligible for election as a delegate to the convention. Vacancies shall be filled in the same manner as for members of the legislature.

"A majority of the delegates elected to the convention shall constitute a quorum. Any proposed revision of, or amendment to, the constitution shall be submitted to the electors when approved by a majority of the delegates voting thereon, provided the affirmative votes equal two-fifths of the delegates elected to the convention, the yeas and nays being entered on the journal to be kept.

"Any revised constitution or any constitutional amendments adopted by such convention shall be submitted to the electors at a time to be provided by the convention, not earlier than sixty days after its adjournment and not later than the first general primary or regular election held thereafter; provided, that upon the demand of twenty-five members of such convention any part or parts of any revised constitution or any constitutional amendment adopted by such convention shall be submitted in such manner that the electors may vote on such part or parts separately; and the votes cast thereon shall be separately counted the same as though but one proposition was submitted.

"Any revised constitution or amendment shall become the constitu-

During the two-year period from 1915-1917, the movement for a convention gained great momentum. Farmer's organizations, civic groups, and chambers of commerce joined in the effort. Finally, an informal poll of the 1917 legislators showed an overwhelming sentiment in favor of a convention call; and the petition campaign was called off by the Nebraska Popular Government League when it became apparent that the legislature would act—as it did.[31] The legislative proposal was submitted to the voters on November 5, 1918, and passed by a vote of 121,830 to 44,491.[32]

It would seem that the size of the affirmative vote would have assured the proponents of constitutional revision "smooth sailing." However, the period 1918-1919 found Nebraska in the throes of wartime hysteria, which among other things, manifested itself in a campaign to eliminate all foreign "influences" in the state. Because a number of the members of the Nebraska Popular Government League and its successor organization, the Committee of One Hundred, were either foreign born or politically and economically classed as liberals or radicals, or both, it evoked an opposition group of conservatives who dedicated themselves to promote "patriotism" and fight "radicalism." This group of conservatives, largely Lincoln and Omaha businessmen, comprised a loosely knit organization known as the New Nebraska Federation whose policy "line" was promulgated through a paper called the *New Nebraskan*. The Federation's number one target was the Non-Partisan League. The Federation's attitude toward constitutional revision and reform was primarily negative, and "The *New Nebraskan* teemed with the gospel of contentment":[33] "Let the Socialist, the bolshevist, the

tion of the state or a part thereof when approved by a majority of the electors voting thereon, and shall take effect, unless otherwise expressly provided by the convention, sixty days after proclamation by the governor which shall be made within ten days after the completion of the official canvass. The vote upon any revised constitution or amendments submitted by the convention shall be returned and canvassed in the manner prescribed by law for the election of presidential electors.

"The provisions of this section shall be mandatory and self-executing, but the legislature may enact laws to facilitate their operation and shall provide for the payment of the necessary expenses of the convention and the submission of its work to the electors. In preparation of election ballots, the Secretary of State and all other officers shall be guided by this section and the general laws until additional legislation shall be provided especially therefor." Quoted in Lewis, *op. cit. supra* note 21, at 27-28 n.*.

[31] Lewis, *op. cit. supra* note 21, at 33-38.

[32] NEBRASKA BLUE BOOK 48 (1960).

[33] Lewis, *op. cit. supra* note 21, at 81.

syndicalist, the Nonpartisan leaguer do the knocking. . . . Cheer up and endorse some of the good things that exist around you."[34]

The progressives, on the other hand, saw the coming convention as an opportunity to write provisions for "classification of property for different rates of taxation," "removal of the limit on state indebtedness" and to permit, if desirable, "state exploitation of its natural resources or the financing of programs of social betterment."[35] Letters were sent seeking support for the progressive movement.[36]

VI. THE CONVENTION OF 1919-1920

But, as might be expected in any pluralistic society, neither the "die hard" conservatives nor the progressive groups were to be satisfied by the outcome of the election of delegates. For the most part the people of Nebraska stood back and let the two major pressure groups fight it out. At the election itself a very light vote was cast, for the "bulk of the people took little interest in the matter."[37] As for the delegates, both A. E. Sheldon and John P. Senning considered them to be generally conservative.[38] Fifty-two of the one hundred delegates had been admitted to the bar and, of the remainder: thirty represented some agricultural interest; five members were bankers; five were primarily concerned with real estate, insurance and mercantile interests; five were closely associated with organized labor; three were preachers, three were teachers, and several were engaged in the newspaper business.

The deliberations of the convention were characterized by a temperate approach to the matters at hand; but no attempt was made to write broad and imaginative provisions designed to promote or foster social, economic or political reforms. Specific defects were ferreted out and specific proposals were composed to meet these defects. All in all the convention functioned as an extraordinary legislature. Senning said, "the delegates were more interested in correcting certain existing abuses than in building a constitution for the future."[39]

[34] New Nebraskan, Oct. 30, 1919, *quoted in* Lewis, *op. cit. supra* note 21, at 81, n.*.

[35] Lewis, *op. cit. supra* note 21, at 87.

[36] See Lewis, *op. cit. supra* note 21, at 95 n.*.

[37] Lewis, *op. cit. supra* note 21, at 103.

[38] I SHELDON, *op. cit. supra* note 2, at 962; Senning, *The Nebraska Constitutional Convention*, 9 NAT'L MUNIC. REV. 421, 426 (1921).

[39] Senning, *id.* at 426.

Despite adverse criticisms, one observes that convention delegates apparently comprised a valid cross-section of the people of the state; for, of the forty-one proposals which were finally gleaned from the 308 submitted, all were approved at the polls by the electorate at the special election held September 21, 1920.[40]

To this observer, as a whole, the product of the convention of 1920 seems quite liberal—especially since the proposals were generated from a cross-sectional group. For example, women suffrage and soldier suffrage were accepted, legislative salaries were increased, privately-owned public utilities were to be required to report to the Railway Commission, petition percentages in the initiative and referendum process were reduced, an industrial commission to administer laws relative to labor disputes and profiteering was established, and the cumbersome amending process was remedied.[41]

Since 1920 fifty-nine amendments have been proposed through the legislative amendment and the initiative and referendum processes. Of these, thirty-four have been incorporated into the constitution. The greater number of these measures could be classified as "legislation"—dealing for the most part with detailed matters of taxation, salaries of state officers, and the organizational aspects of state administration.

VII. THE MECHANICS OF REVISION

A. Legislative Amendments

The present constitutional provisions for legislative amendment of Nebraska's fundamental law require: (1) passage of the proposal by three-fifths of the legislative membership and a formal entry on the legislative journal attesting the fact; (2) publication of notice in one newspaper in each county for three consecutive weeks prior to the next election of legislators; and (3) approval of the proposal by at least thirty-five percent of the total number of electors who participate in the election described in (2).[42] In its present form the legislative amendment process is similar to provisions used in the majority of states for the same purpose. Furthermore, in specific detail it now circumvents or cures the difficulties and defects which

[40] I SHELDON, *op. cit. supra* note 2, at 962. A list of these proposals can be found in any current NEBRASKA BLUE BOOK; see, *e.g.*, NEBRASKA BLUE BOOK 95-96 (1960).

[41] NEBRASKA BLUE BOOK 95-96 (1960).

[42] NEB. CONST. art XVI, § 1.

were experienced in the past. The earlier difficulty of amendment was met by the acceptance of Proposal No. 39 of the 1920 Convention, which reduced the required majority of votes favoring amendment to thirty-five per cent of the vote cast.

B. Revision by Convention

Only two successful constitutional conventions have been held since Nebraska became a state—in 1875 and 1920. There have, however, been a number of unsuccessful attempts to call conventions, most of which have died in legislative committees. Sheldon reports that one movement started in 1897.[43] Others have arisen periodically since 1920, but there has been an almost complete lack of enthusiasm for such meetings to the present.[44] For example, in 1950, the *Lincoln Star* reported some sentiment in favor of convening a convention: "Changes in the Nebraska Constitution are needed and a convention is the best approach . . . ."[45] But in the same issue one found "stiff opposition." The general anti-convention sentiment was summed up in the following words: "Unless there is a widespread demand for many changes in the state constitution, why disturb our orderly government and create dissention by calling a convention to revamp the entire document?"[46] A decade later a similar negative attitude was expressed by the representative of the Associated Industries of Nebraska. "He said the measure is unnecessary, costly and dangerous."[47] In the same vein he expressed the belief that "Changes should be made one at a time by the voters when they have an opportunity to examine the proposals with greater scrutiny . . . ."[48]

Proponents of L.B. 134, the most recent attempt to submit to the people the question of calling a constitutional convention, include both the Republican State Chairman, and the executive secretary of the Democratic State Central Committee. Bipartisan agreement on this matter may signal the beginning of a growing consensus in favor of definite action. The incumbent Lieutenant

[43] Sheldon, *The Nebraska Constitutional Convention*, 1919-1920, 15 AM. POL. SCI. REV. 391 (1921).

[44] During the period 1940-1960 bills were introduced in 1947 (L.B. 519, 550), 1949 (L.B. 200), 1951 (L.B. 191), 1955 (L.B. 270), 1957 (L.B. 238) and 1959 (L.B. 606). Most were killed in committee.

[45] Lincoln Star, Feb. 18, 1950, p. 2, col. 6.

[46] *Id.* at p. 5, col. 5.

[47] Lincoln Evening Journal, April 14, 1961, p. 5, col. 2.

[48] Lincoln Star, April 14, 1961, p. 11, col. 3.

Governor, former Governor Dwight Burney, recently added his recommendation for a convention; he told the judiciary committee that he is "disturbed by the number of constitutional amendments considered by the Legislature. . . . There seems to be no end to amendments on taxation. . . . They could eventually completely break down our system of taxation." Governor Burney also noted that there is "too much legislation" in the constitution and "many contradictions."[49] During the recent hearings, as in the past, others argued in favor of the need for change simply on the basis of constitutional antiquity; *i.e.* that political, economics, social, and technological advances since 1921 require constitutional revision in order to make Nebraska's basic law a modern one.

C. Amendments by Popular Initiative

Since the installation of the initiative and referendum in 1921, six initiated amendments have been incorporated into the constitution. Five of them have been concerned with what might be termed substantive matters of some political, social or economic importance (*e.g.*, "establishment of the unicameral legislature," and the "abolition of the 'closed shop' "); but the sixth, however, concerned a change in the basis upon which public power districts made payments to local governments, a technical and procedural matter which might be termed "legislation." This use of the initiatory process for substantive change is in striking contrast to the type of constitutional changes usually effected by the legislative amending process, which, especially during the last decade, has been used mainly for introducing and incorporating much minutely-detailed "legislation" into the fundamental law.[50]

The initiative and referendum process was brought into Nebraska on the "wave" of Lafollette progressivism which swept through the Middle West in the early 1900's. Taking full advantage of this popular liberal trend and utilizing the "Party Circle Law" progressive Nebraskans were able to get the measure incorporated into the constitution in 1912. As amended, the law now provides: (1) that ten per cent of the electors in the state, so distributed as to include five per cent from each of two-fifths of the counties, can file a petition with the Secretary of State proposing the constitutional amendment appearing "over" their signatures (the initial

[49] *Ibid.*

[50] Of the 36 amendments proposed by the legislature during the period 1950-1960, approximately 80% (28 amendments) dealt with taxation or salaries or administrative details of state or local officers and offices.

ten per cent requirement is computed from the total number of votes cast for the governor in the last election); (2) the Secretary of State is then empowered to submit the proposal to the electorate "at the first general election held not less than four months"[51] after the petition has been filed; (3) if the proposal receives a favorable majority, equal in number to at least thirty-five per cent of the total vote cast in the election, it becomes an integral part of the constitution.[52] It is also provided that the initiative provision of the constitution be construed so as not to conflict with the convention and legislative amendment methods outlined in Article XVI.[53] In order to "facilitate" the initiative amending process the legislature is authorized to pass implementary laws, although the constitutional provision declares that the process is "self-executing."[54]

Several Nebraska Supreme Court decisions which bear upon the operation of the initiative process may be of interest: In *Lincoln Federal Labor Union v. Northwestern Iron and Metal Co.*,[55] the petitioner challenged the people's right to enact a "closed shop" amendment into the constitution, alleging violation of certain rights under the federal constitution. The court disagreed upon that point:[56]

> . . . [T]he people . . . by reason of the sovereign power vested in them, may enact a law or alter and amend their own constitution by the method prescribed in the instrument itself, subject, however, to every limitation or restraint lawfully imposed upon them by virtue of some authority derived from the Constitution of the United States.

The second decision bearing upon the initiative process was brought in connection with the denial by a Lancaster County district court of a writ of mandamus to compel the Secretary of State to "accept and file certain initiative petitions" involving a constitutional amendment, limiting, in various ways, the tax levy on farm and city property. It appears that the petitions did not conform to a statutory provision which required:[57]

> Prior to obtaining any signatures to said petition, a copy of the form to be used shall be filed with the secretary of state together with a sworn statement containing the name or names of

[51] NEB. CONST. art. III, § 2.

[52] NEB. CONST. art. III, § 4.

[53] *Ibid.*

[54] *Ibid.* See also NEB. REV. STAT. §§ 32-702 to -713 (Reissue 1960), for the implementary laws.

[55] 149 Neb. 507, 31 N.W.2nd 477 (1948).

[56] *Id.* at 522, 31 N.W.2nd at 487.

[57] Neb. Laws c. 34 (1939). *Cf.* NEB. REV. STAT. §§ 32-702 to -713 (Reissue 1960).

> every person, corporation or association sponsoring said petition or contributing or pledging contribution of money or other things of value for the purpose of defraying the cost of the preparation, printing or circulation thereof.

In an appeal to the Supreme Court it was contended that the provisions in question did not "facilitate their operation" [*i.e.* the initiative provisions in Article III, sections 2-4] and that they, therefore, were unconstitutional.[58] The court did not agree, and, through Judge Carter, justified its position as follows: [59]

> We think the constitutional provision authorizing the legislature to enact laws to facilitate the operation of the initiative powers means that it may enact reasonable legislation to prevent fraud or to render intelligible the purpose of the proposed law or constitutional amendment. . . . Any legislative act which tends to insure a fair, intelligent, and impartial result on the part of the electorate may be said to facilitate the exercise of the initiative power. We believe the provisions of the act before us meet these requirements.

Clarifying further, Judge Carter said: [60]

> The requirement that the form of the petition be filed with the secretary of state before the petitions were circulated is calculated to advise the electorate in advance as to the exact provisions of the proposal through publicity resulting from its filing. By this means the proposal is rendered intelligible and the possibilities of fraud greatly reduced.

It is entirely possible that the legislators of Nebraska had anticipated the sort of behind the scenes maneuvering employed by Art Samish, the one-time boss of the state of California. By clever use of billboard publicity, Samish on several occasions completely obscured the issues raised in a number of initiated laws introduced in that state. Undoubtedly he was all the more effective because he worked in secret.[61] Under the implementary statutes, interested Nebraska voters can determine what persons or organizations are behind any initiated proposals.

VIII. ANALYSIS AND CONCLUSION

As amended to date, the Nebraska Constitution provides three comparatively easy methods of revision and amendment. To some degree this compensates for the fact that the constitution contains

[58] State *ex rel.* Winter v. Swanson, 138 Neb. 597, 294 N.W. 200 (1940).

[59] *Id.* at 599, 294 N.W. at 201.

[60] *Ibid.*

[61] See Velie, *The Secret Boss of California,* Colliers, Aug. 13, 1949, pp. 71-73; Aug. 20, 1949, pp. 12-13, 60-64.

dozens of sections and thousands of words devoted to matters which, in the opinion of the writer, should be incorporated in the state's legislative code. Mr. Chief Justice Marshall put it this way:[62]

> A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deduced from the nature of the objects themselves.

The path by which the constitution is most frequently amended is the legislative amendment route. As it now stands, any proposal which is not patently obnoxious to the voters, can usually be expected to pass. Possibly the alleged abuse of the legislative amendment and initiative processes can be rationalized as follows:[63]

> Properly drafted constitutions should not be changed often, nor would they need to be. But most state constitutions are not properly drafted and they do need continual and constant change. They have lost their character of fundamental law and can no longer be said to contain a formulation of the fundamental principles of government. It avails little to bemoan the fact that the state constitutions as they now exist are not as they should be. The present problem is how best to arrange the process of amendment so that the evils which naturally flow from improperly drafted and lengthy constitutions can be mitigated to the greatest extent.

This writer believes the statement above applicable to Nebraska's basic law. It remains to comment upon the matter of constitutional revision through the use of a convention. One is inclined to agree wholeheartedly that there is a need for eliminating from the Nebraska Constitution unnecessary details on salaries, taxation, lower executive offices, administrative particulars, and obsolete provisions of all varieties; and it appears that a campaign for constitutional revision could be rationally launched and sustained upon these matters alone. Other approaches to the question, however, seem recurrently to crop up whenever the matter of studying constitutional alteration is broached.

One of the common arguments advanced to defend constitutional revision—especially in justification for initiating a call for a state constitutional convention—is that the mere fact that the constitution has not been comprehensively examined and revised

[62] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819).

[63] BATES & FIELD, STATE GOVERNMENT 101 (Sikes and Stoner, 4th ed. 1954).

for forty years leads to the conclusion that there is a good probability of obsolescence. In short, the theory is that a constitution is like a piece of equipment: mere passage of time causes deterioration and, thus, the constitutional convention convenes to make "repairs." This reasoning may be faulty.

There are no hidden "parts" to the constitution; nor do the "materials," from which constitutions are constructed, wear out. Constitutional flaws, for the most part, are fairly easy to find either by inspection of the instrument or through the observation of its operation over a long period of time. Remedy of flaws in the Nebraska Constitution requires, primarily, popular consensus. Once such consensus exists, any of the various processes of revision and amendment can be used to make the desired changes within a relatively short period of time. For instance, individual defects can be dealt with by legislative or popularly-initiated amendments. Widespread agreement as to a complex of defects might require that a convention be called. In either case the *sine qua non* is a substantially large enough public, motivated to demand or initiate remedial measures.